

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Falcon Community Ventures I	)	
	)	File No. CSB-A-0383
Appeals of Local Rate Order	)	File No. CSB-A-0631
of the City of Rockmart, Georgia	)	
CUID GA0087	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 25, 2005**

**Released: January 28, 2005**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Falcon Community Ventures I (“Falcon”), the franchised cable operator in Rockmart, Georgia, has appealed the February 11, 1997 Resolution of the City of Rockmart (“City”).<sup>1</sup> The City’s local rate order revised basic service tier (“BST”) rates over four time periods and established a revised hourly service charge (“HSC”) affecting equipment and installation rates for three time periods and ordered refunds.<sup>2</sup> The City opposed the appeal.<sup>3</sup> Falcon replied.<sup>4</sup> After considering the record, we are granting the appeal in part, denying it in part, and remanding some matters to the City for further action consistent with this order.

2. Falcon has also appealed the May 11, 1999 Resolution of the City of Rockmart,<sup>5</sup> so that any relief granted regarding its earlier appeal will be reflected in the starting point for computing the rates reviewed in the May 11 1999 Resolution.<sup>6</sup> The City opposed this appeal. We are denying the appeal.

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<sup>1</sup> Falcon, Petition for Review of Resolution, filed Mar. 13, 1997 (“Falcon Petition” or “Petition”). At the same time, Falcon petitioned for a stay of enforcement pending appeal, which is being dismissed as moot.

<sup>2</sup> City of Rockmart, Georgia, Resolution No. 002 1997, found at Falcon Petition, Ex. A (“City Resolution” or “1997 Resolution”).

<sup>3</sup> Opposition of the City of Rockmart, Georgia to Petition for Review of Resolution, filed Mar. 26, 1997 (“City Opposition” or “Opposition”).

<sup>4</sup> Falcon, Reply, filed Apr. 7, 1997 (“Falcon Reply” or “Reply”).

<sup>5</sup> City of Rockmart, Georgia, Resolution No. 1999-H.

<sup>6</sup> Falcon, Petition for Review of Rate Order, filed June 10, 1999. At the same time, Falcon petitioned for a stay of enforcement pending appeal, which is being dismissed as moot. The City opposed the stay.

## II. BACKGROUND

3. Rate orders issued by a franchising authority may be appealed to the Commission.<sup>7</sup> In ruling on appeals, the Commission will not conduct a de novo review, but instead will sustain the franchising authority's decision if it has a reasonable basis.<sup>8</sup> The Commission will reverse a franchising authority's decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules.<sup>9</sup> If the Commission reverses a franchising authority's decision, it will not substitute its own decision, but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.<sup>10</sup>

4. Cable operators using the Commission's benchmark methodology computed initial regulated BST rates using FCC Form 1200.<sup>11</sup> Cable operators periodically adjust their BST rates for changes in inflation, external costs, or the number of channels. Cable operators initially used FCC Form 1210 for computing adjustments pursuant to the Commission's quarterly rate adjustment methodology.<sup>12</sup> The Commission subsequently adopted an annual rate adjustment methodology computed on FCC Form 1240.<sup>13</sup> Cable operators have the option of using either rate form. Cable operators annually compute cost-based equipment and installation rates using FCC Form 1205.<sup>14</sup>

5. When establishing initial regulated rates, cable operators computed their total regulated revenue per subscriber from programming tiers and equipment installations and leases, adjusted this based on benchmarks or the full differential between competitive and non-competitive cable systems, removed per subscriber equipment and installation costs computed on the FCC Form 1205 Worksheet for Calculating Total Equipment and Installation Costs, and allocated the remaining regulated revenue among then-regulated programming tiers to establish programming tier rates.<sup>15</sup> This methodology established a reciprocal relationship between programming tier revenues and equipment costs that was severed once the cable operator unbundled equipment costs from regulated revenues.

## III. DISCUSSION

6. In its February 1, 1997 Resolution, the City revised Falcon's BST rates computed on four rate forms: FCC Form 1200 for the period July 14, 1994 through July 10, 1995; the first FCC Form 1210

<sup>7</sup> 47 U.S.C. § 543(b)(5)(B); 47 C.F.R. § 76.944(b).

<sup>8</sup> *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5731 ¶ 149 (1993); 9 FCC Rcd 4316, 4346 ¶ 81 (1994).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See FCC Form 1200, Setting Maximum Initial Permitted Rates for Regulated Cable Services Pursuant to Rules Adopted February 22, 1994 (May 1994). FCC Form 1200 replaced FCC Form 393 previously used for establishing initial regulated programming and equipment rates.

<sup>12</sup> See FCC Form 1210, Updating Maximum Permitted Rates for Regulated Cable Services (May 1995).

<sup>13</sup> See FCC Form 1240, Updating Maximum Permitted Rates for Regulated Cable Services (July 1996).

<sup>14</sup> See FCC Form 1205, Determining Regulated Equipment and Installation Costs (May 1994, revised June 1996).

<sup>15</sup> See FCC Form 1200 (May 1994); FCC Form 1205, Worksheet for Calculating Total Equipment and Installation Costs (May 1994 and June 1996), and accompanying FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equipment and Installation at 21-23. This worksheet is used only for unbundling.

for the period July 11, 1995 through March 22, 1996; the second FCC Form 1210 for the period from March 23, 1996 through September 24, 1996; and FCC Form 1240 for the period starting September 25, 1996. The City also revised the hourly service charge (“HSC”) on three FCC Forms 1205: the first for the period July 14, 1994 to July 10, 1995 using Fiscal Year 1992 data; the second for the period July 11, 1995 to September 24, 1996 using Fiscal Year 1994 data; and the third for September 25, 1996 using Fiscal Year 1995 data. In reaching its conclusions, revising rates, and ordering refunds, the City relied on a report from its consultant.<sup>16</sup>

#### **A. Equipment Basket and Hourly Service Charge**

7. After reviewing Falcon’s justification for its initial regulated BST rate and its hourly service charge (“HSC”), the City’s consultant advised the City that Falcon had not unbundled contract labor expenses when computing its BST rate on FCC Form 1200, although Falcon did include contract labor expenses in its equipment basket costs in the next two FCC Form 1205s addressed in the City Resolution.<sup>17</sup> The consultant also advised that Falcon’s equipment basket did not include the hours and dollars for repairing and maintaining home wiring, although Falcon imposed either a per-visit charge or a monthly wire maintenance charge for this activity.<sup>18</sup> The consultant recommended adjusting Falcon’s monthly equipment cost per subscriber, the figure used for unbundling equipment basket costs from regulated BST revenue, and recommended that the adjustment be computed from Falcon’s monthly wire maintenance charge, not any particular costs.<sup>19</sup> He recommended adding this estimate of wire maintenance costs and Falcon’s estimate of its contract labor expenses to the other customer equipment and installation costs in the computation. He recommended a corresponding adjustment to Falcon’s initial unbundled BST rate. The consultant also recommended adjusting Falcon’s HSC to reflect his estimate of the hours and dollars attributable to home wiring repair and maintenance.<sup>20</sup> Based on the consultant’s analysis and recommendations, the City found that “the Company erroneously excluded contract labor and home wiring maintenance expense from its calculation of Monthly Equipment Cost per Subscriber and its Hourly Service Charge.”<sup>21</sup>

8. Falcon challenges both the City’s decision to increase the equipment basket by adding in amounts representing additional contract labor and home wiring maintenance expenses and the City’s methodology for calculating the additional home wiring maintenance cost.<sup>22</sup> Falcon argues that the City made the same mistakes in calculating the HSC and also argues that the City should not have calculated an HSC for the period covered by Falcon’s initial FCC Form 1205, which it claims was completed for unbundling purposes only.<sup>23</sup>

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<sup>16</sup> For the consultant’s report, see Letter from Don Shanding, Local Gov’t Operations and Assistance, Georgia Municipal Ass’n, to Emerson Yearwood, Director of Gov’t Relations, Falcon, (Dec. 18, 1996) (“GMA Report”), found at Falcon Petition, Ex. B.

<sup>17</sup> GMA Report at 2.

<sup>18</sup> *Id.* at 2-3.

<sup>19</sup> *Id.* at 3 & App. A.

<sup>20</sup> *Id.* at 3 & App. B.

<sup>21</sup> City Resolution at 1.

<sup>22</sup> Falcon Petition at 3-5 & n.5.

<sup>23</sup> *Id.* at 5 & n.6.

9. *Contract labor expenses.* According to Falcon, it treated the contract labor costs associated with customer installations as part of the capitalized cost of a drop and, therefore, was not required to include this expense in the equipment basket.<sup>24</sup> It argues that “[i]nstallations can involve both the connection of a subscriber drop and the installation of inside wiring from the drop to the receiver,” and claims that the City acted unreasonably “[b]y treating all of Falcon’s contract labor installation costs as though they related to inside wiring.”<sup>25</sup> According to the City, Falcon’s argument admits that some costs were related to inside wiring, so they should have been included in the equipment basket from the outset and unbundled from the BST.<sup>26</sup> The City further argues that Falcon never provided support for its claim that a portion of the disputed contract labor expenses was incurred on the network side of the demarcation point.<sup>27</sup> Instead, Falcon wrote to the City’s consultant that “Falcon did not unbundle these costs on its Form 1200, but did do so on Form 1205’s filed in 1995 and 1996.”<sup>28</sup>

10. This letter and Falcon’s later inclusion of these costs in the equipment basket support the City’s finding that the disputed contract labor costs should have been included in the equipment basket from the outset. Falcon, however, capitalized those costs initially and later included them in the equipment basket without reflecting the unbundling in the BST rate. Although Falcon correctly states that labor costs associated with the initial installation of the drop up to the cable network demarcation point could either be included in subscriber installation charges or capitalized as part of the cost of drops,<sup>29</sup> Falcon should not have capitalized any labor costs associated with equipment or inside wiring located on customer premises.<sup>30</sup> Those costs should have been placed in the equipment basket at the outset and unbundled from BST rates. When Falcon later added those costs to the equipment basket without unbundling them, it recovered the same costs twice, through both the BST rate and the equipment basket.<sup>31</sup> We conclude from the record before us that the City’s treatment of Falcon’s contract labor expenses was not unreasonable. Falcon’s appeal on this issue is denied.

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<sup>24</sup> *Id.* at 3.

<sup>25</sup> Falcon Petition at 4 (emphasis in original).

<sup>26</sup> City Opposition at 4-5.

<sup>27</sup> *Id.* at 4.

<sup>28</sup> Letter from Marty Schwartz, Dir. Corp. Development, Falcon, to Greg Fender, Dir., Georgia Municipal Ass’n (Nov. 11, 1996) (“Falcon Nov. 11, 1996 Letter”), at 1, found at Falcon Reply, Ex. A.

<sup>29</sup> See Falcon Petition at 3-4; FCC Form 1205 Instructions for Determining Costs of Regulated Cable Equipment and Installations, at 15 Note 2.

<sup>30</sup> FCC Form 1205 Instructions at 15 Note 2 (June 1996).

<sup>31</sup> *Id.* See City Opposition at 4-5 & n.7. Unbundling equipment costs from the regulated revenues used to set programming rates reduced the BST rate, because those costs were no longer recovered through the BST rate. Costs that were not unbundled were built into the cable operator’s base rate and continue to be recovered through the base rate until unbundled. See also *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 9 FCC Rcd 4316, 4365 ¶ 135 (1994) (evasion of Commission rate rules are prohibited); *Jones Communications of Georgia/South Carolina, Inc.*, 19 FCC Rcd 14814, 14817 ¶ 10 (Media Bur. 2004) (an operator shifting costs from the BST to the equipment basket after the initial unbundling but without adjusting the BST rate may be recovering the costs twice, once through the BST and again through the equipment basket; an operator restructuring equipment costs recovered through regulated BST rates must make an appropriate adjustment).

11. *Optional Wire Maintenance Agreement.* Falcon claims that the City erred when adding wire maintenance agreement costs to the equipment basket because Falcon had already unbundled these costs and included them in the equipment basket. According to Falcon, it does not separate out expenses for installing and maintaining equipment based on how it charges subscribers, although it also argues that the wire maintenance agreement charge is unregulated.<sup>32</sup> “[T]hus, the wages, vehicles, tools and overhead necessary to install and maintain all customer premises equipment, including inside wiring, are already included in Schedule B of Form 1205.”<sup>33</sup> According to the City, at the time of the rate review, Falcon told a franchising authority served by the same head end, “Expenses and capital costs related to home wire maintenance are not included in Schedules A, B and C of Form 1205.”<sup>34</sup> Falcon told the City’s consultant, however, that “Falcon has not yet completed the analysis of the available information needed to make this determination.”<sup>35</sup> Falcon later told the City’s consultant that it had never attempted to establish a cost-based rate, but that actual earned revenue from all HSC-based charges, including wire maintenance agreements, approximated its previously unbundled costs for the region, and an analysis at the franchise level would yield similar results.<sup>36</sup> Falcon argues here that this information is responsive to the City’s request for home wire maintenance cost information and that the City’s adjustment will produce an equipment basket amount it does not and cannot recover.<sup>37</sup>

12. We agree with the City that Falcon’s explanations are not responsive to the City’s request for information about Falcon’s treatment of home wire maintenance in FCC Form 1205 filings. Telling the City’s consultant that it hadn’t completed its analysis and that its regional equipment basket revenues approximate the amount it unbundled in the region don’t answer the City’s questions about how Falcon treated wire maintenance in the rate forms filed with the City. Falcon’s statement here that all of its expenses were included in Schedule B of its FCC Form 1205 was not available to the City when it reviewed Falcon’s rates and is unverified and undocumented.<sup>38</sup>

13. We agree with Falcon, however, that the City’s recalculation of the monthly equipment cost per subscriber, the amount used to unbundle equipment costs from regulated revenues, must be remanded. Given Falcon’s unresponsiveness to the City’s information requests, the City would be justified in using the best available information in its determination, including cost information obtained from other sources or derived from other information provided by Falcon. Because the City based its adjustment on Falcon’s Wire Maintenance Agreement Charge,<sup>39</sup> which was not cost-based and was still subject to review,<sup>40</sup> its adjustment was not reasonable and must be remanded.<sup>41</sup> On remand the City

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<sup>32</sup> Falcon Petition at 4 & n.4.

<sup>33</sup> *Id.* at 4.

<sup>34</sup> City Opposition at 5.

<sup>35</sup> *Id.* at 6 and Ex. D, Reply to Question 5 (Letter from Falcon to Donald W. Shanding, Rate Analyst, GMA (Nov. 7, 1996)).

<sup>36</sup> Falcon Nov. 11, 1996 Letter at 2.

<sup>37</sup> Falcon Reply at 4.

<sup>38</sup> According to the Falcon Petition at 4, these expenses purportedly included vehicles. FCC Form 1205, Schedule A, Capital Costs of Service Installation and Maintenance of Equipment and Plant, and FCC Form 1205 Instructions at 7, Instructions for Schedule A, provide for treating vehicles as capital costs.

<sup>39</sup> See GMA Report, App. A.

<sup>40</sup> See Falcon Petition at 4 n.4; Falcon Nov. 11, 1996 Letter at 2; GMA Report at 5.

should determine the appropriate wire maintenance costs and whether Falcon unbundled these wire maintenance costs from its programming revenues. If the costs were unbundled, they should not be unbundled a second time.<sup>42</sup> So that the City's review of Falcon's wire maintenance on remand can be as informed as possible, Falcon is instructed to provide the City with detailed information justifying its treatment of wire maintenance costs within a reasonable time set by the City for filing the information.<sup>43</sup>

14. Falcon also argues that the City erroneously computed the adjustment by using the number of cable subscribers in the Rockmart "region" rather than the number for the Rockmart franchise area, which Falcon entered on line 11 of the Form 1205 Worksheet for Calculating Total Equipment and Installation Costs.<sup>44</sup> Repeating the explanation in the consultant's report, the City explains that its consultant used the regional subscriber number when adjusting Line 7 of the unbundling worksheet because Falcon performed its calculations for Line 7 at the regional level.<sup>45</sup> Then, like Falcon, the consultant allocated expenses to the franchise level on Lines 8 and 9 and determined the per subscriber equipment basket cost for the franchise area using the number of subscribers in the franchise area shown on Line 11.<sup>46</sup> This removed the expense for subscribers who are not within the City of Rockmart. Falcon's argument that the City's consultant erroneously used the wrong number of subscribers is without merit and is denied.<sup>47</sup>

15. *Hourly Service Charge.* Falcon argues that the City made the same errors in recalculating Falcon's HSC that it made in recalculating Falcon's equipment basket because the City's consultant added the same contract labor costs and home wiring maintenance costs discussed above to the HSC computation on each Form 1205 that Falcon had filed.<sup>48</sup> We find no merit to Falcon's claim regarding contract labor costs for the reasons discussed *supra* in paragraph 10. To the extent that the City adjusted for home wiring maintenance based on Falcon's Wire Maintenance Agreement Charge, which was not cost-based and was pending review by the City, we agree and are remanding this issue for further consideration. Our concern with this adjustment is the same concern we have with the City's adjustment to the equipment basket discussed *supra* in paragraph 13, that a rate not based on costs and still subject to review is not an appropriate surrogate for actual costs. Once Falcon provides more responsive information about its wire maintenance costs, the City should take that information into consideration on remand.<sup>49</sup>

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<sup>41</sup> See *Falcon First Communications, L.P.* (Whitfield County, GA), 14 FCC Rcd 7277, 7284 (Cab. Serv. Bur. 1999), *rev. denied*, 15 FCC Rcd 17059 (2000).

<sup>42</sup> Unbundling the same costs twice would raise equipment and installation costs above actual costs, the statutory standard for equipment and installation rates in 47 U.S.C. § 543(b)(3), and would unfairly suppress programming tier rates computed on FCC Form 1200.

<sup>43</sup> See *Falcon First Communications, L.P.*, 15 FCC Rcd at 17060 ¶ 4.

<sup>44</sup> Falcon Petition at 5 n.5.

<sup>45</sup> City Opposition at 7-8; GMA Report, App. A.

<sup>46</sup> City Opposition at 8.

<sup>47</sup> See *Falcon First Communications, L.P.*, 14 FCC Rcd at 7284 ¶ 18.

<sup>48</sup> Falcon Petition at 5.

<sup>49</sup> Falcon also states that the City had erroneously computed an HSC for its first Form 1205 covering the period through July 10, 1995, which it says it submitted for unbundling purposes only. See Falcon Petition at 5 n.6. After  
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**B. Minimum Installation Charges**

16. The City found that Falcon charged subscribers for one-half hour of labor for installations, despite the fact that some installation types typically require substantially less than half an hour to resolve.<sup>50</sup> The City ordered refunds of the estimated overcharges and ordered Falcon not to set a minimum charge for service calls and not to include travel time in the charges.<sup>51</sup> According to the City's consultant, Falcon excluded travel time to a customer's home in calculating its HSC but was effectively recovering travel time from some customers by charging a minimum rate for service calls.<sup>52</sup>

17. Falcon objects to the City's treatment of its minimum service charge, arguing that a cable operator is entitled to use an average for setting installation rates and that its installation charges average out because customers whose installations take up to 45 minutes are charged for only one-half hour of time. Thus, it argues, its practice is not unreasonable.<sup>53</sup> The City disagrees, arguing that Falcon elected to charge an hourly rate for each installation, not an average rate, and that its charges do not average out.<sup>54</sup> According to the City, the only installations requiring more than 30 minutes are unwired installations, which require 80 minutes on average. No other installation type requires more than 16.2 minutes on average. The City also argues that Falcon's calculation reduces the number of hours spent performing installations, which raises the HSC because it is computed as the cost of performing installations divided by the number of hours spent performing installations.<sup>55</sup>

18. Neither the Commission's rules nor FCC Form 1205 specify any particular method for counting labor hours. What is required, however, is that an operator use the same method for counting labor hours both when calculating the HSC and when calculating the specific charges for its various installations and equipment.<sup>56</sup> This makes an operator's choice about handling indirect and direct costs revenue neutral. FCC Form 1205 allows an operator to elect whether to bill for installations on the basis of the HSC or a standard charge. Having elected to bill based on the HSC, Falcon cannot bill some customers more than the HSC for installation and maintenance and rationalize it as an "average."<sup>57</sup> The City was not unreasonable in finding that Falcon's practice could result in overcharges and in ordering Falcon to discontinue the practice. Falcon's appeal on this issue is denied.

19. Falcon also objects to the City's computation of the refund amount. The City based on Falcon's actual rate rather than the higher maximum permitted rate and, lacking installation data for the

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the City responded that it based the HSC for the period through July 10, 1995 on Falcon's FCC Form 393, the rate form controlling the HSC charged through that period, and that Falcon had no refund liability for that period, *see* City Opposition at 9-10 & n.13; GMA Report, App. B, Falcon did not pursue this point. *See* Falcon Reply at 3 n.1 (reiterating Falcon's position that the City miscalculated the HSC from July 11, 1995 forward).

<sup>50</sup> City Resolution at 1.

<sup>51</sup> *Id.* at 2, Ordering Clauses 4, 7.

<sup>52</sup> GMA Report at 4 and App. C.

<sup>53</sup> Falcon Petition at 6-7.

<sup>54</sup> City Opposition at 12-13.

<sup>55</sup> *Id.* at 13-14.

<sup>56</sup> *Falcon First Communications, L.P.*, 14 FCC Rcd at 7287.

<sup>57</sup> *Id.*

franchise area at issue, the City used 1992 installation data from a neighboring Falcon-managed system as the best available information for the average time for performing installations.<sup>58</sup> Falcon argues that the City should have used 1996 data.<sup>59</sup> The City defends its refund calculation, arguing that the relevant calculation is based on the amount that Falcon actually overcharged, not how much it could have overcharged using a higher HSC, and that Falcon was able to offset overcharges with undercharges.<sup>60</sup>

20. We disagree with Falcon and find that the City did not act unreasonably by using 1992 data rather than more current data when determining its refund liability for Falcon's service charge. Falcon has not stated whether better information was available to the City when it issued its Resolution or even whether the number of installations in 1992 would be appreciably different from the number performed in 1996.<sup>61</sup> A mere assertion that the City erred in the information used is not sufficient to establish that the City acted unreasonably. Falcon's appeal on this issue is denied.

21. We agree with Falcon, however, that refunds should have been determined based on the permitted rate, the rate Falcon could have charged, rather than the lower rate it did charge. Refund liability for equipment and installation charges is based on the difference between a cable operator's actual rate and its permitted rate.<sup>62</sup> If an operator's revenue from its actual service charge exceeds the revenue computed from its permitted rate during the review period, the operator must refund the difference. Requiring a cable operator to make refunds when it has received less than the permitted rate for a service call is comparable to ordering the cable operator to charge less than the permitted rate, which a franchising authority may not do.<sup>63</sup> Because the City determined refund liability by comparing the revenue Falcon received from its service charges with what Falcon should have received from its actual HSC for those installations, rather than its permitted HSC, the City's refund order is not reasonable and is remanded.

### C. Written Decision Regarding Recalculations of FCC Forms 1210 and 1240

22. In addition to adjusting Falcon's permitted rate computed on FCC Form 1200, the City adjusted Falcon's rates computed on the two FCC Form 1210s and the FCC Form 1240 it reviewed.<sup>64</sup> Falcon argues that the City failed to adequately explain its recalculation of these rates. In particular, it argues that the City's inflation adjustment to the Form 1240 does not account for all of the disallowed rate increase.<sup>65</sup> In opposing Falcon's arguments, the City explains that adjustments to Falcon's FCC Form

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<sup>58</sup> GMA Report at App. C.

<sup>59</sup> Falcon Petition at 7-8.

<sup>60</sup> City Opposition at 14-15.

<sup>61</sup> *Compare Falcon First Communications, L.P.*, 14 FCC Rcd at 7282 ¶ 12 (franchising authority lacking information about contract labor rates for the period covered by the rate form under review could use relevant information from a rate form submitted for a different time period but should have adjusted those labor rates based on intervening changes in the price index). We are not aware of comparable publicly-available information relevant to estimating the number of installations that Falcon performed in 1996 as compared to 1992.

<sup>62</sup> See 47 C.F.R. § 76.942; *A-R Cable Services-ME, Inc. v. Town of Lisbon*, 10 FCC Rcd 1783, ¶ 7 (Cab. Serv. Bur. 1995).

<sup>63</sup> See *TCI of Southeast Mississippi*, 10 FCC Rcd 8728, 8730 ¶¶ 13, 15 (1995).

<sup>64</sup> City Resolution at 2 Ordering Clause 1.

<sup>65</sup> Falcon Petition at 5-6.



1200 were carried forward to subsequent rate forms.<sup>66</sup> Falcon does not dispute this explanation in its Reply.

23. Commission rules require that a franchising authority reviewing an operator's rate filing issue a publicly available written decision that apprises the operator of the reasons for the franchising authority's actions.<sup>67</sup> If the cable operator's rates are not approved, the decision must provide a sufficient basis for the rulings to inform the operator of the reasons the rate was disapproved so the operator may decide whether to appeal the decision.<sup>68</sup> The City's Resolution along with the consultant's report meets this "written decision" standard. The Resolution identified problems with the Falcon rate forms under review, and the consultant further explained that the changes made to Falcon's FCC Form 1200 affected Falcon's subsequent rate forms. These documents show that Falcon erroneously moved a group of channels from regulated tiers at the onset of rate regulation and treated them as unregulated a la carte channels, which it offered individually or through a "Satellite Package."<sup>69</sup> The City treated the channels as regulated and, consequently, increased the number of regulated channels shown on the form and reduced the permitted BST rate computed on Form 1200.<sup>70</sup> The City carried this adjustment forward when reviewing Falcon's prescribed rates for periods covered by Falcon's two FCC Forms 1210.<sup>71</sup> Because of the changed channel count, the City reduced the adjustment for new channels that Falcon took on both of its FCC Forms 1210 from \$0.03 to \$0.02 per channel. From this documentation,<sup>72</sup> we conclude that Falcon knew and understood the reasons for the City's adjustment to its rates. We find that the City's Resolution meets the Commission's "written decision" standard and deny Falcon's appeal on this issue.

24. The City also adjusted Falcon's FCC Form 1240 to correct for Falcon's use of an out-of-date inflation rate when it filed.<sup>73</sup> Falcon concedes that it filed its FCC Form 1240 with outdated information, but asks us to require that franchising authorities allow corrections for such errors to be reflected in the cable operator's next rate filing rather than the one under review.<sup>74</sup> We disagree. Procedures for reviewing and issuing decisions on an operator's rate forms vary considerably among franchising authorities, and the decision about how to deal with errors in a cable operator's data has been left to the discretion of the franchising authority, as long as that discretion is not exercised arbitrarily.<sup>75</sup> Falcon has not alleged arbitrariness on the City's part. Falcon's preference for the convenience of a deferred correction is not a sufficient reason for constraining the exercise of a franchising authority's

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<sup>66</sup> See City Opposition at 10-11.

<sup>67</sup> *Rate Order*, 8 FCC Rcd at 5723-24.

<sup>68</sup> *Falcon Telecable*, 13 FCC Rcd 2598, 2602 ¶ 12 (Cab. Serv. Bur. 1998).

<sup>69</sup> City Resolution at 1; GMA Report at 1-2.

<sup>70</sup> See *id.*

<sup>71</sup> City Resolution at 1; GMA Report at 3-4.

<sup>72</sup> See *supra* ¶ 7 for a description of unbundling adjustments made to Falcon's FCC Form 1200, which could also affect the rate carried forward.

<sup>73</sup> City Resolution at 1; GMA Report at 4.

<sup>74</sup> Falcon Petition at 6 n.7.

<sup>75</sup> Cf. *Michelson Media, Inc.* (Los Alamos, NM), 15 FCC Rcd 13311, 13314-15 ¶ 9 (Cab. Serv. Bur. 2000) (franchising authorities have discretion to decide whether to refresh inflation data when making other corrections to a rate form).

discretion about how to deal with erroneous information in a cable operator's rate submission. We deny Falcon's appeal on this issue.

#### **D. Timing of Refund Order**

25. The City's 1997 Resolution addressed permitted BST rates computed on four rate forms, starting with Falcon's FCC Form 1200 dated August 31, 1994 and ending with Falcon's FCC Form 1240 in effect from September 25, 1996 forward.<sup>76</sup> The City Resolution directed Falcon to refund that portion of previously paid BST rates determined to exceed the initial permitted rates approved by the City and allowed an offset to the extent that potential revenues from the City-approved permitted HSC rates would have exceeded the revenue generated by Falcon's published HSC.<sup>77</sup> The City ordered that the refund period start 305 days prior to the February 11, 1997 effective date of the City Resolution and run through the date Falcon implemented required rate reductions.<sup>78</sup> Because the City Resolution acknowledged offsets but did not resolve rates for converters, remote control devices, and Falcon's home wire maintenance plan,<sup>79</sup> Falcon argues that it cannot fully implement the offset methodology recognized in the City Resolution. It argues, therefore, that the City's refund order is premature.<sup>80</sup>

26. Our remand of issues affecting the unbundling calculation used for Falcon's FCC Form 1200 may affect subsequent programming rates, so the City's refund order may need to be revised consistent with actions taken on remand.<sup>81</sup> We disagree with Falcon's argument, however, that once initial unbundling issues are resolved, the City should resolve subsequent programming and equipment rates in the same proceeding because the City permits refund offsets. Unbundling ends the reciprocal relationship between programming rates and the unbundled equipment basket costs, and refund offsets for unbundled rates are not permitted.<sup>82</sup> We note that the City permitted refund offsets for initial permitted rates but did not encompass those rates in its refund order.

#### **IV. JUNE 10, 1999 APPEAL**

27. Falcon asks that corrections to the starting rate on Line A1 of FCC Form 1240 resulting from the Commission's action on its original appeal be reflected in the FCC Form 1240 reviewed in the City's May 11, 1999 Resolution. Section 76.944(c) of the Commission's rules provides that an operator using the annual rate adjustment method for computing BST rate adjustments may include in its next true up any amounts to which the operator would have been entitled but for a franchising authority decision that is not upheld on appeal.<sup>83</sup> This should protect Falcon's interests in being able to reflect favorable Commission action in future rates. Falcon's appeal is denied.

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<sup>76</sup> City Resolution at 1.

<sup>77</sup> *Id.* at 2 Ordering Clause 3.

<sup>78</sup> *Id.*

<sup>79</sup> See GMA Report at 5 (review of these matters not yet concluded).

<sup>80</sup> Falcon Petition at 8.

<sup>81</sup> See *supra* ¶ 13.

<sup>82</sup> See *Media Genera Cable of Fairfax County, Inc.*, 12 FCC Rcd 17424, 17432 ¶ 23 (Cab. Serv. Bur. 1997), *rev. denied*, 16 FCC Rcd 15617 (2001).

<sup>83</sup> 47 C.F.R. § 76.944(c).

**V. ORDERING CLAUSES**

28. Accordingly, IT IS ORDERED that the Petition for Review of Rate Order filed by Falcon Community Ventures I on March 13, 1997 (File No. CSB-A-0383) IS GRANTED IN PART AND DENIED IN PART and that Resolution No. 002 1997 IS REMANDED IN PART to the City of Rockmart, Georgia for further action consistent with this Memorandum Opinion and Order.

29. IT IS FURTHER ORDERED that, within a reasonable time set by the City of Rockmart, Georgia, Falcon Community Ventures I MUST SUBMIT to the City of Rockmart, Georgia detailed information justifying its treatment of expenses associated with its inside wiring maintenance plan as directed herein.

30. IT IS FURTHER ORDERED that the Petition for Stay of Enforcement Pending Appeal filed by Falcon Community Ventures I on March 13, 1997 (File No. CSB-A-0383) IS DISMISSED.

31. IT IS FURTHER ORDERED that the Petition for Review of Rate Order filed by Falcon Community Ventures I on June 10, 1999 (CSB-A-0631) IS DENIED.

32. IT IS FURTHER ORDERED that the Petition for Stay of Enforcement Pending Appeal filed by Falcon Community Ventures I on June 10, 1999 (CSB-A-0631) IS DISMISSED.

33. This action is taken pursuant to authority delegated by section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

John B. Norton  
Deputy Chief, Policy Division, Media Bureau